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10/597,549	09/03/2008	Richard M. Woundy	007412.00135	2599

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EXAMINER

KAY, MARY ANNE

ART UNIT	PAPER NUMBER
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2426

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/597,549	Applicant(s) WOUNDY ET AL.	
	Examiner MARY ANNE KAY	Art Unit 2426	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 January 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,5,8,9,11 and 18-26 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,5,8,9,11 and 18-26 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 06 June 2008 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date. _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This Office Action is in response to an AMENDMENT entered November 17, 2010 for the patent application 10/597549 filed on September 3, 2008.
2. The Office Actions of August 13, 2009, March 16, 2010 and are fully incorporated into this Final Office Action by reference.

Status of Claims

3. Claims 1-2, 5, 8-9, 11 and 18-26 are pending in this application.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-2 and 22-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Peck (U.S. PGPub 2004/0153207 A1, referred to as **Peck**) in further view of He et al. (U.S. Patent 6,088,451, referred to as **He**) in further view of Hendricks et al. (U.S. Patent 6,201,536, referred to as **Hendricks**), Paragraph 19. below applies.

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Claim 1

Peck teaches:

A method of failsoft operation, the method comprising:

providing a policy to a facility, the policy defining two sets of rules for handling

database transaction approvals requested by the facility from a database

at the time of a request for content download (**Peck ¶ 0064**; Examiner's

Note (EN): Examiner interprets that the computer receiving the set of rules

is analogous to the facility receiving the set of rules. Paragraph 19. below

applies),

a first set of rules governing normal operation when communication with the

database is successful (**Peck ¶ 0064**; EN: Examiner interprets that the

computer receiving the set of rules is analogous to the facility receiving the

set of rules. Paragraph 19. below applies), and

failsoft rules governing limited transaction approval in the event of a

communication failure between the facility and the database at a time of a

content download request (**Peck ¶ 0064**; EN: Examiner interprets that the

computer receiving the set of rules is analogous to the facility receiving the

set of rules. Paragraph 19. below applies),

determining that a communication failure exists between the facility and the

database at a time of a content download request (**Peck ¶ 0064**; EN:

Examiner interprets communication with computer and controller

analogous to headend-facility communication. Paragraph 19. below applies).

Peck fails to teach:

using, by a facility computing device, the failsoft rules to preliminarily grant approval for the requested transaction in response to determining that a communication failure exists between the facility and the database at the time of the download request;
wherein the limited transaction approval includes a purchase cost limit;

He teaches:

using, by a facility computing device, the failsoft rules to preliminarily grant approval for the requested transaction in response to determining that a communication failure exists between the facility and the database at the time of the download request (**He** C15:35-C16:4; EN: Risk denial of service to authorized users).

Rationale:

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the teachings of **Peck** with the Fail-safe policy as taught by **He** for the purpose of providing Server Reliability since their continuous execution plays a central role in the successful and continuous network operation.

Peck in view of **He** fails to teach:

wherein the limited transaction approval includes a purchase cost limit;

Hendricks teaches:

wherein the limited transaction approval includes a purchase cost limit

(**Hendricks** C18:54-62; EN: Preview channel authorized. Paragraph 19.
below applies);

Rationale:

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the teachings of **Peck** in view of **He** with the cost limit as taught by **Hendricks** for the purpose of providing the viewer services without full authorization and payment.

Claim 2

Peck teaches:

response to resolution of the communication failure, transmitting an update from the facility to the database informing the database of the requested transaction (**Peck** ¶ 0064; EN: Examiner interprets communication with computer and controller analogous to headend-facility communication. Paragraph 19. below applies).

Claim 22

Peck et al. fails to teach:

wherein the request for content is a request to view pay-per-view television content.

Hendricks teaches:

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wherein the request for content is a request to view pay-per-view television content (**Hendricks** C16: 58-65).

Rationale:

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the teachings of **Peck** et al. with the PPV as taught by **Hendricks** for the purpose of providing set top terminals connected to the headend.

Claim 23

Peck et al. fails to teach:

wherein the request for content is a request to add service to a user's subscription plan.

Hendricks teaches:

wherein the request for content is a request to add service to a user's subscription plan (**Hendricks** C16: 52-57).

Rationale:

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the teachings of **Peck** et al. with the adding of service as taught by **Hendricks** for the purpose of providing additional security when the user has not purchased the channels.

Claim 24

Peck et al. fails to teach:

wherein the request to add service is a request to add one or more television channels to a television subscriber's subscription lineup.

Hendricks teaches:

wherein the request to add service is a request to add one or more television channels to a television subscriber's subscription lineup (**Hendricks** C16:52-57).

Rationale:

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the teachings of **Peck** et al. with the adding of service as taught by **Hendricks** for the purpose of providing additional security when the user has not purchased the channels.

Claim Rejections - 35 USC § 103

6. Claims 5 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Peck** in view of **He** in further view of **Hendricks** in further view of Burns et al. (U.S. Patent 6,275,496, referred to as **Burns**).

Claim 5

Peck et al. fails to teach:

the facility is a cable television headend.

Burns teaches:

the facility is a cable television headend (**Burns** Fig. 2, el. 52; C6:9-13).

Rationale:

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It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the teachings of **Peck** et al. with the headend as taught by **Burns** for the purpose of providing network resources to distribute video assets to viewers that were requested.

Claim 25

Peck et al. fails to teach:

determining that the communication failure exists based on communication delay.

Burns teaches:

determining that the communication failure exists based on communication delay
(**Burns** C1:50-62).

Rationale:

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the teachings of **Peck** et al. with the long as taught by **Burns** for the purpose of providing long delays in delivering data which look like communication failures.

Claim Rejections - 35 USC § 103

7. Claims 8 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Russell et al. (U.S. PGPub 2002/0069420 A1, referred to as **Russell**) in view of **Peck** in further view of **He** in further view of **Hendricks**, Paragraph 19. below applies.

Claim 8

Russell teaches:

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A method of failsoft operation comprising:

receiving a request for content at the facility (**Russell** ¶ 0056);

attempting to communicate to an authorization computer a request for approval of the request for content (**Russell** ¶ 0056; EN: Authentication required from the database. Paragraph 19. below applies);

Russell fails to teach:

receiving, at a facility computing device, a set of failsoft rules, the rules defining a communication failure content download cost limit;

determining that a communication failure has delayed or disrupted the process of obtaining approval of the request from the authorization computer;

in response to the communication failure, approving or denying the request for content according to the facility's received set of failsoft rules.

Peck teaches:

receiving, at a facility computing device, a set of failsoft rules (**Peck** ¶ 0064; EN: Examiner interprets that the computer receiving the set of rules is analogous to the facility receiving the set of rules. Paragraph 19. below applies);

Rationale:

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the teachings of **Russell** with the determining that a communication failure exists as taught by **Peck** for the purpose of providing as

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part of the fail-soft operation, following of a protocol in which an error message is transmitted in the event of a failed transmission.

Russell in view of **Peck** fails to teach:

determining that a communication failure has delayed or disrupted the process of obtaining approval of the request from the authorization computer;
in response to the communication failure, approving or denying the request for content according to the facility's received set of failsoft rules.

He teaches:

determining that a communication failure has delayed or disrupted the process of obtaining approval of the request from the authorization computer (**He** C15:35-C16:4; EN: Risk denial of service to authorized users);
in response to the communication failure, approving or denying the request for content according to the facility's received set of failsoft rules (**He** C15:35-C16:4; EN: Risk denial of service to authorized users).

Rationale:

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the teachings of **Russell** in view of **Peck** with the Fail-safe policy as taught by **He** for the purpose of providing Server Reliability since their continuous execution plays a central role in the successful and continuous network operation.

Russell in view of **Peck** in further view of **He** fails to teach:

the rules defining a communication failure content download cost limit;

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Hendricks teaches:

the rules defining a communication failure content download cost limit

(**Hendricks** C18:54-62; EN: Preview channel authorized. Paragraph 19.

below applies);

Rationale:

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the teachings of **Russell** in view of **Peck** in further view of **He** with the cost limit as taught by **Hendricks** for the purpose of providing the viewer services without full authorization and payment.

Claim 9

Russell et al. fails to teach:

in response to resolution of the communication failure, transmitting an update from the facility to the database informing the database of the requested transaction.

Peck teaches:

response to resolution of the communication failure, transmitting an update from the facility to the database informing the database of the requested transaction (**Peck** ¶ 0064; EN: Examiner interprets communication with computer and controller analogous to headend-facility communication. Paragraph 19. below applies).

Rationale:

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the teachings of **Russell** et al. with the determining that a communication failure exists as taught by **Peck** for the purpose of providing as part of the fail-soft operation, following of a protocol in which an error message is transmitted in the event of a failed transmission.

Claim Rejections - 35 USC § 103

8. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over **Russell** in view of **Peck** in further view of **He** in further view of **Hendricks** in further view of **Burns**.

Claim 11

Russell et al. fails to teach:

the facility is a cable television headend.

Burns teaches:

the facility is a cable television headend (**Burns** Fig. 2, el. 52; C6:9-13).

Rationale:

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the teachings of **Russell** et al. with the headend as taught by **Burns** for the purpose of providing network resources to distribute video assets to viewers that were requested.

Claim Rejections - 35 USC § 103

9. Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over **Russell** in view of **He** in further view of **Hendricks**, Paragraph 19. below applies.

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Claim 18

Russell teaches:

A content delivery method, comprising:
receiving, at a first computing device, a user request for downloading content,
wherein access to the content requires the device to request authorization
from a central facility database (**Russell** ¶ 0056; EN: Authentication
required from the database. Paragraph 19. below applies);

Russell fails to teach:

determining that a communication failure exists between the computing device
and the central facility at the time of a content download request; and
granting limited approval to the request and limiting the download to a
predetermined communication failure cost limit established in a
communication failure content download failsoft rule.

He teaches:

determining that a communication failure exists between the computing device
and the central facility at the time of a content download request (**He**
C15:35-C16:4; EN: Risk denial of service to authorized users); and
granting limited approval to the request and limiting the download to a
predetermined communication failure (**He** C15:35-C16:4; EN: Risk denial
of service to authorized users).

Rationale:

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It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the teachings of **Russell** with the Fail-safe policy as taught by **He** for the purpose of providing Server Reliability since their continuous execution plays a central role in the successful and continuous network operation.

Russell in view of **He** fails to teach:

failure cost limit established in a communication failure content download failsoft;

Hendricks teaches:

failure cost limit established in a communication failure content download failsoft rule (**Hendricks** C18:54-62; EN: Preview channel authorized. Paragraph 19. below applies);

Rationale:

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the teachings of **Russell** in view of **He** with the cost limit as taught by **Hendricks** for the purpose of providing the viewer services without full authorization and payment.

Claim Rejections - 35 USC § 103

10. Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over **Russell** in view of **He** in further view of **Hendricks** in further view of **Burns**.

Claim 19

Russell et al. fails to teach:

wherein the receiving occurs at a cable television system headend.

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Burns teaches:

wherein the receiving occurs at a cable television system headend (**Burns** Fig. 2, el. 52; C6:9-13).

Rationale:

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the teachings of **Russell** et al. with the headend facilities as taught by **Burns** for the purpose of providing network resources to distribute video assets to viewers that were requested.

Claim Rejections - 35 USC § 103

11. Claims 20 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Russell** in view of **He** in further view of **Hendricks** in further view of Lloyd et al. (U.S. PGPub 2005/0102297, referred to as **Lloyd**).

Claim 20

Russell et al. fails to teach:

wherein the central database is realized as a relational database.

Lloyd teaches:

wherein the central database is realized as a relational database (**Lloyd** ¶ 812).

Rationale:

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the teachings of **Russell** et al. with the database type as taught by **Lloyd** for the purpose of providing a distributed object-oriented directory database reflecting "many to one" relationships of elements within a

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directory object class and the instantiations of that class within a named hierarchical structure.

Claim 21

Russell et al. fails to teach:

wherein the central database is realized as an LDAPv3.0 directory.

Lloyd teaches:

wherein the central database is realized as an LDAPv3.0 directory (**Lloyd ¶** 812).

Rationale:

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the teachings of **Russell** et al. with the directory type as taught by **Lloyd** for the purpose of providing per this standard a distributed object-oriented directory database reflecting "many to one" relationships of elements within a directory object class and the instantiations of that class within a named hierarchical structure.

Claim Rejections - 35 USC § 103

12. Claim 26 is rejected under 35 U.S.C. 103(a) as being unpatentable over **Russell** in view of **Peck** in further view of **He** in further view of **Hendricks** in further view of Buckman et al. (U.S. PGPub 2002/0188732 A1, referred to as **Buckman**), Paragraph 19. below applies.

Claim 26

Russell et al. fails to teach:

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the facility receiving periodic updates to the set of failsoft rules from the authorization computer.

Buckman teaches:

the facility receiving periodic updates to the set of failsoft rules from the authorization computer (**Buckman** ¶ 0029; EN: Management server maintains and updates the policy. Paragraph 19. below applies).

Rationale:

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the teachings of **Russell** et al. with the periodic updates as taught by **Buckman** for the purpose of providing improved data transfer predictability by allocating network bandwidth as tunnels dedicated to applications.

Response to Arguments

13. In reference to Applicant's argument:

None of the applied references teach or suggest the amended claim 1 method.

Examiner's Response:

Applicant's amendments have been fully considered. Therefore, the rejection of claim 1 has been withdrawn. However, upon further consideration, a new ground(s) of

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rejection is made in view of Peck (U.S. PGPub 2004/0153207) and He et al. (U.S. Patent 6,088,451) and Hendricks et al. (U.S. Patent 6,201,536).

14. In reference to Applicant's argument:

Amended independent claim 8 recites, among other features, the following (emphasis added): "receiving, at a facility computing device, a set of failsoft rules, the rules defining a communication failure content download cost limit."

None of these references shows the recited communication failure content download cost limit as part of the recited failsoft rules.

Examiner's Response:

Applicant's amendments have been fully considered. Therefore, the rejection of claim 8 has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Russell et al. (U.S. PGPub 2002/0069420 A1) and Peck (U.S. PGPub 2004/0153207) and He et al. (U.S. Patent 6,088,451) and Hendricks et al. (U.S. Patent 6,201,536).

15. In reference to Applicant's argument:

Amended independent claim 18

None of the references shows a communication failure content download failsoft rule establishing a predetermined communication failure cost limit.

Examiner's Response:

Applicant's amendments have been fully considered. Therefore, the rejection of claim 18 has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Russell et al. (U.S. PGPub 2002/0069420 A1) and He et al. (U.S. Patent 6,088,451) and Hendricks et al. (U.S. Patent 6,201,536).

Examination Considerations

16. The claims and only the claims form the metes and bounds of the invention.

“Office personnel are to give the claims their broadest reasonable interpretation in light of the supporting disclosure. *In re Morris*, 127 F.3d 1048, 1054-55, 44 USPQ2d 1023, 1027-28 (Fed. Cir. 1997). Limitations appearing in the specification but not recited in the claim should not be read into the claim. *In re Prater*, 415 F.2d 1393, 1404-05, 162 USPQ 541, 550-551 (CCPA 1969) (MPEP p 2100-8, c 2, I 45-48; p 2100-9, c 1, I 1-4). The Examiner has full latitude to interpret each claim in the broadest reasonable sense. Examiner will reference prior art using terminology familiar to one of ordinary skill in the art. Such an approach is broad in concept and can be either explicit or implicit in meaning.

17. Examiner’s Notes are provided with the cited references to prior art to assist the applicant to better understand the nature of the prior art, application of such prior art and, as appropriate, to further indicate other prior art that maybe applied in other office actions. Such comments are entirely consistent with the intent and spirit of compact prosecution. However, and unless otherwise stated, the Examiner’s Notes are not prior art but a link to prior art that one of ordinary skill in the art would find inherently appropriate.

18. Unless otherwise annotated, Examiner’s statements are to be interpreted in reference to that of one of ordinary skill in the art. Statements made in reference to the condition of the disclosure constitute, on the face of it, the basis and such would be

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obvious to one of ordinary skill in the art, establishing thereby an inherent prima facie statement.

19. Examiner's Opinion: ¶¶ 16.-18. apply. The Examiner has full latitude to interpret each claim in the broadest reasonable sense.

Conclusion

20. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Correspondence Information

21. Any inquiry concerning this communication or earlier communications from the Examiner should be directed to MARY ANNE KAY whose telephone number is (571)270-5677, FAX (571)270-6677, e-mail mary.kay@uspto.gov. The Examiner can normally be reached on Monday -Thursday and every other Friday, 8:00 AM - 5:00 PM, EST.

As detailed in MPEP 502.03, communications via Internet e-mail are at the discretion of the Applicant. Without a written authorization by Applicant recorded in the Applicant's file, the USPTO will not respond via e-mail to any Internet correspondence which contains information subject to the confidentiality requirement as set forth in 35 U.S.C. 122. A paper copy of such correspondence will be placed in the appropriate patent application. The following is an example authorization which may be used by the Applicant:

Notwithstanding the lack of security with Internet Communications, I hereby authorize the USPTO to communicate with me concerning any subject matter related to the instant application by e-mail. I understand that a copy of such communications related to formal submissions will be made of record in the applications file.

If attempts to reach the examiner by telephone are unsuccessful, the Examiner's supervisor, Joseph Hirl can be reached on (571)272-3685. Any response to this office action should be mailed to:

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Alexandria, Virginia 22313,

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Mary Anne Kay
Examiner

/Joseph P. Hirl/
Supervisory Patent Examiner, Art Unit 2426
January 31, 2011